

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION**

UNITED STATES OF AMERICA)	
)	
VS.)	CR. NO. 1:05CR152-T
)	
HOUSTON MIKE HOLLY)	

WAIVER OF CONFLICT OF INTEREST

The United States Constitution gives every criminal defendant the right to effective assistance of counsel. When one lawyer represents two or more defendants in a conspiracy case, the lawyer may have trouble representing all of the defendants with the same fairness. This is a conflict of interest that denies the defendant the right to effective assistance of counsel. In conspiracy cases such conflicts are always a potential problem because different defendants may have different degrees of involvement. Each defendant has the right to a lawyer who represents him and only him.

This kind of conflict of interest can be dangerous to a defendant in a number of ways. A few examples are: the Government may offer to recommend a lesser sentence to one defendant if he cooperates with the Government. His lawyer ought to advise him on whether or not to accept his offer. But if the lawyer advises him to accept the offer, it may harm the cases of the other defendants, who are also his clients.

The Government might let a defendant who is not as involved as other defendants plead guilty to lesser charges than the other defendants. After the guilty plea, however, the Government may require the defendant to testify. The lawyer who represents more than one defendant might recommend that the first defendant not plead guilty to protect the other defendants that he represents; or the lawyer might recommend that the first defendant plead guilty, which might harm the cases of the other defendants.

Sometimes one of the defendants represented by a lawyer will take the stand to testify in his own behalf. In order to represent the other defendants

fairly the lawyer should question the defendant on the stand as completely as possible. However, he may not be able to do that because he cannot ask the defendant about anything that defendant has told him in confidence.

In a conspiracy case, the best defense for a single defendant often is the argument that while there may be a conspiracy and the other defendants may be guilty, he is not a part of the conspiracy and is not guilty. A lawyer representing two or more defendants cannot effectively make such an argument.

Evidence that helps one defendant might harm another defendant's case. When one lawyer represents two or more defendants, he might offer or object to evidence that could help one defendant if it harms the other defendant's case.

The Court advises defendants against representation by a lawyer who also represents other defendants in the same case. The Court urges each defendant to retain a lawyer who will represent him and only him. Each defendant can also give up that right, if he chooses. A defendant can change his mind about this later, but the trial will not be postponed to allow time to get another lawyer. If a defendant does not have the financial ability to hire an attorney, the Court will appoint an attorney to represent such defendant without cost to such defendant.

I HAVE READ THE ABOVE STATEMENT, AND I UNDERSTAND IT FULLY. I KNOW I HAVE A RIGHT TO AN ATTORNEY OF MY OWN, BUT I WANT TO GIVE UP THIS RIGHT. I want Hon. Sydney Albert Smith as my lawyer, even though he/she represents one or more defendants in this case and he/she might have a conflict which would not be in my best interest.

Houston Mike Holling

8-2-05

DATE